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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICK ROWE, DAVID N. MYERS,
MARC C. ESPIN, and DEAN CROTHERS
Appeal 2009-004717
Application 09/688,854
Technology Center 2100

Decided: August 27, 2009

Before ALLEN R. MACDONALD, *Vice Chief Administrative Patent Judge*,
and, ST. JOHN COURTENAY, III and CAROLYN D. THOMAS,
Administrative Patent Judges.

MACDONALD, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) (2002) from the Examiner's rejection of claims 1-8, 10-14, and 17-33. We have jurisdiction under 35 U.S.C. § 6(b) (2008).

We affirm-in-part.

STATEMENT OF THE CASE

According to Appellants, the invention relates to the configuration and arrangement of graphical user interfaces.¹

Exemplary Claim

1. A method of configuring a graphical user interface associated with an application executed by a computing device of a gaming system, said gaming system including at least one gaming device adapted to accept a wager by a player, present a game, and grant an award for predetermined winning events comprising the steps of:

providing a set of navigation selectable elements;

accepting a first input from a given user of said gaming system;

accepting a second input from an operator of said gaming system;

providing a user identification associated with said given user;

determining a user profile from said user identification;

determining which elements from said set of navigation selectable elements that said user is permitted to view in accordance with said user profile; and

displaying only said navigation selectable elements said user is allowed to view, wherein said resulting display is customized to the user based at least in part upon said first input and said second input.

17. A gaming system comprising:

a computing device adapted to accept a first input from a given user of said gaming system and a second input from an operator of said gaming system;

¹Spec. 2, ll. 2-3.

at least one gaming device associated with said computing device, said gaming device adapted to accept a wager by a player, present a game, and grant an award for predetermined winning events;

at least one first user station and at least one second user station associated with said system for displaying information and for providing input to said computing device; and

a graphical user interface for displaying said information, said graphical user interface including:

a main window having a navigation viewport displaying one or more navigation selectable elements, one or more of said one or more navigation selectable elements comprising an application initiating element,

and a data viewport arranged to display information associated with an application initiated by selection of one of said one or more application initiating elements, wherein said graphical user interface is adapted to display said navigation selectable elements in a plurality of configurations dependent upon a configuration of a station on which said graphical user interface is displayed or a user profile, and wherein said resulting display is customized to the user based at least in part upon said first input and said second input.

Prior Art

The Examiner relies on the following prior art references to show unpatentability:

Wynn	5,971,271	Oct. 26, 1999
Sinclair	6,554,707 B1	Apr. 29, 2003
Bradshaw	6,905,409 B1	Jun. 14, 2005

Examiner's Rejections

1. The Examiner rejected claims 1-8, 10-14, and 17-19 under 35 U.S.C. §103(a) as unpatentable over Wynn and Sinclair.
2. The Examiner rejected claims 20-24 and 33 under 35 U.S.C. §103(a) as unpatentable over Wynn, Sinclair and Bradshaw.

Claims 1-8, 10-14, 32, and 33

Examiner's Findings and Conclusions

The Examiner found that "Wynn discloses displaying a set of navigation selectable elements" as "[f]igure 20 of Wynn discloses buttons on the user interface" that "clearly represent buttons that are selectable to access a desired function." (Ans. 18). Further, the Examiner found that "[t]he Figures 17 following Figure 17A [of Sinclair] display a step by step process where links which are navigation selectable elements are displayed to the user based on the user profile or user identification." *Id.*

Appellants' Arguments and Contentions

Appellants contend, with respect to independent claims 1 and 32, that (1) "[t]here is no disclosure or suggestion in Sinclair of using a user profile to determine which navigation selectable elements a user is permitted to view," and (2) "that none of the FIGs. 17 show or refer to any 'user profile' in making a determination as to which elements to display from a set of navigation selectable elements to display." (Reply Br. 4) (emphasis omitted).

ISSUE

The issue before us is whether the prior art teaches or suggests determining which elements from a set of navigation selectable elements a user is permitted to view in accordance with the user's profile.

FINDINGS OF FACT

1. We find that Sinclair discloses "[i]n order to incorporate user profile information in a game, user profile information retrieved from the memory 1504 in the mobile station 102 is sent to the server 1412. The server 1412 incorporates this profile information into the game service 1414." (Sinclair, col. 15, ll. 36-40) (emphasis omitted).

2. We also find that Sinclair discloses selectable elements, for example, element 1710, of FIG. 17B, which illustrates three actions from which a user may select: (1) Go downstairs; (2) Go to window; and (3) Go back to work. (*See* Sinclair, FIG. 17B).

PRINCIPLES OF LAW

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner must make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966).

If the Examiner's burden is met, the burden then shifts to the Appellants to overcome the *prima facie* case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

ANALYSIS

Exemplary claim 1 recites "determining which elements from said set of navigation selectable elements that said user is permitted to view in

accordance with said user profile" (App. Br. 24, Claims Appendix). We find that Sinclair discloses (1) selectable elements and (2) a game service that incorporates user profile information. (*See* FF 1-2). However, we find that the Examiner fails to explain how the prior art teaches or suggests that the selectable elements that a user is permitted to view are (1) determined from a set of navigation selectable items, and (2) that the user profile information is utilized to determine the selectable elements that a user is permitted to view.

Therefore, for the foregoing reasons, Appellants have persuaded us of error in the Examiner's conclusion of obviousness with regard to independent claims 1 and 32. Accordingly, the Examiner's rejection of (1) independent claim 1, and claims 2-8 which depend therefrom, and (2) independent claim 32, and claim 33 which depends therefrom, is reversed.

Independent claim 10 is commensurate in scope with independent claims 1 and 32, as claim 10 recites "determining an access point for said ordered navigation selectable elements for said given user from said profile, said access point determining a portion of said navigation selectable elements which are accessible to said given user and a portion of said navigation selectable elements which are not accessible to said given user" (App. Br. 26, Claims Appendix). Therefore, for the foregoing reasons found above with regard to exemplary claim 1, Appellants have persuaded us of error in the Examiner's conclusion of obviousness. Accordingly, the Examiner's rejection of independent claim 10, and claims 11-14 which depend therefrom, is also reversed.

Claims 17, 20, 21, 25, 26, and 28-30

Appellants' Arguments and Contentions

Appellants contend "claim 17 requires a main window and a data viewport as separate claim elements." (App. Br. 19). Appellants argue "[d]espite the various references to Sinclair provided in the Final Office Action, nothing in the cited passages and figures, or in Sinclair in general, teaches of a main window having a navigation viewport and also a separate data viewport, as claimed." (*Id.*) (emphasis omitted).

Appellants also argue that column 5, lines 1-30 of Wynn, cited by the Examiner in the Final Office Action, fails to teach (1) a GUI adapted to display navigation selectable elements; (2) in a plurality of configurations; and (3) dependent upon a configuration of a station on which said GUI is displayed or a user profile, as recited in independent claim 17 (*see id.*).

Further, Appellants argue that (1) "while claim 17 recites a computing device, a gaming device, a first user station and a second user station, the Final Office Action appears to designate at various times an ordinary gaming machine as all of these elements," and (2) "these items are to be considered as four separate elements" (*id.*).

ISSUE

The issues before us are (1) whether the prior art teaches or suggests a main window, a navigation viewport and a data viewport; (2) whether claim 17 requires a graphical user interface adapted to display navigation selectable elements in a plurality of configurations, and dependent upon a configuration of a station on which said GUI is displayed or a user profile; and (3) whether claim 17 requires four separate and distinct pieces of

hardware corresponding to a computing device, gaming station, first user station, and second user station.

ADDITIONAL FINDINGS OF FACT

3. The Examiner found that "[t]he navigation viewport shown in reference number 1706 of Figure 17B [of Sinclair] displays navigation selectable elements that are associated with an application." (Ans. 31). Further, the Examiner found "[t]he user is able to select any of the navigation selectable elements in that viewport to navigate to a different screen." (*Id.*; *see also* Sinclair, FIG 17B).
4. The Examiner also found that "[f]ollowing a selection in the navigation viewport, a data viewport is displayed, with information that is associated with the application being displayed in reference number 1708 of Figure 17B." (*Id.*; *see also* Sinclair, FIG 17B).
5. The Examiner found that Wynn discloses a graphical user interface (GUI) in FIGS. 20 and 20A. (*Id.*).
6. The Examiner found that "Wynn discloses a game system that includes a computing device, a gaming device, a first user station and a second user station." (*Id.* at 32). Further, the Examiner found a first user station and a second user station represent the areas at which the concierge and player access their data. The computing device includes the computer at which the concierge at their station would access the information needed. The gaming device is located at the player's station where the player can access the games and any service that is appropriate for that player.
(*Id.*).

7. We also find that Wynn discloses

[a]t a central station or other location remote from all augmented gaming devices 10, a number of concierge or guest assistance personnel are located, each having their own station shown in FIGS. 1 and 4 including a computer 41, a monitor 42, a television camera 43 and an operator type headset represented here, simply as a telephone handset 44.

(Wynn, col. 5, ll. 30-35) (emphasis omitted).

PRINCIPLES OF LAW

Non-Functional Descriptive Material

Non-functional descriptive material refers to data content that does not exhibit a functional interrelationship with the substrate and does not affect the way the computing processes are performed. *See* MPEP § 2106.01. In a precedential decision, an expanded panel recently held that elements that do not affect the claimed process are non-functional material and are merely descriptive. *See Ex parte Nehls*, 88 USPQ2d 1883, 1887-1888 (BPAI 2008) (precedential).

The Examiner need not give patentable weight to descriptive material absent a new and unobvious functional relationship between the descriptive material and the substrate. *See In re Lowry*, 32 F.3d 1579, 1582-1583 (Fed. Cir. 1994); *In re Ngai*, 367 F.3d 1336, 1339 (Fed. Cir. 2004) (nonfunctional descriptive material cannot render nonobvious an invention that would have otherwise been obvious). *See also Ex parte Mathias*, 84 USPQ2d 1276 (BPAI 2005) (nonprecedential), *aff'd*, 191 Fed.Appx. 959 (Fed. Cir. 2006).

ANALYSIS

Claim 17 recites "a graphical user interface for displaying said information, said graphical user interface including: a main window having a navigation viewport ..., and a data viewport arranged to display information" (App. Br. 27, Claims Appendix).

We agree with the Examiner that Sinclair teaches a main window having a navigation viewport, as Figure 17B illustrates a box containing selectable elements, i.e., a navigation viewport, within a larger frame, i.e., main window. (FF 3). We also agree with the Examiner that Sinclair teaches a data viewport, as element 1708 of FIG. 17B, illustrates a box containing data that is positioned within a larger frame 1708. (FF 3-4).

Further, we find that the claims do not require that the main window or the graphical user interface include, at the same time, a navigation viewport and a data viewport, but only a graphical user interface that has a navigation viewport and a data viewport. Thus, we find that Sinclair discloses a main window having a navigation viewport, i.e., element 1706 of FIG. 17B, and a main window having data viewport, i.e., element 1708 of FIG. 17B, that is separate from the navigation viewport. (FF 3-4).

Appellants argue Wynn fails to teach or suggest (1) a GUI adapted to display navigation selectable elements; (2) in a plurality of configurations; and (3) dependent upon a configuration of a station on which said GUI is displayed or a user profile. (App. Br. 19). We find that claim 17 is directed to a gaming system, and includes a GUI which displays data, as found by the Examiner. (FF 5). We find that Wynn teaches a GUI, and (1) how the GUI is "adapted to display navigation selectable elements," and (2) what the display is "dependent upon" constitutes non-functional descriptive material.

Further, we find that such non-functional descriptive material does not correspond to any other specific structure other than the display, and does not change the function of the display. Accordingly, with regard to this "GUI adaptation" claim limitation, the prior art need only teach a GUI.

Further, we agree with the Examiner that Wynn discloses a computing device, gaming station, first user station, and second user station. (FF 6). Appellants argue that these items are to be considered as four separate elements. (App. Br. 19). However, we disagree with Appellants.

We find that (1) the four separate elements referred to in the claims do not necessarily require four separate and distinct pieces of hardware, and (2) one claim element is not precluded from being a component (hardware or software) which performs that individual function in a device or system that includes plural of the four separate elements. Thus, we conclude that the Examiner's finding of (1) a first user station, i.e., the concierge's station, which includes a computing device, and (2) a second user station, i.e., the player's station, which includes a gaming device, is permissible.

Accordingly, Appellants have not persuaded us of error in the Examiner's conclusion of obviousness regarding independent claim 17. Appellants did not argue claims 20, 21, 25, 26, and 28-30, which depend from independent claim 17, separately. (See App. Br. 19-23). Thus, the Examiner's rejection of claims 17, 20, 21, 25, 26, and 28-30 is sustained.

Claim 18

ADDITIONAL FINDINGS OF FACT

8. The Examiner relied on Sinclair, column 19, lines 25-26 in the rejection of claim 18. (Ans. 11). We find Sinclair discloses that "the

disclosed embodiments are described as using a reduced keypad. Such keypads can be found on conventional mobile stations. However, any suitable input device may be used, such as a touchpad, for example." (Sinclair, col. 19, ll. 24-27).

ANALYSIS

Claim 18 depends from independent claim 17 and recites "wherein said at least one first user station comprises a station having a touch-sensitive display and wherein said graphical user interface adapted to display one or more of said navigation selectable elements as user-selectable buttons." (App. Br. 28, Claims Appendix).

The Examiner found that "Sinclair discloses a touchpad which can be used to directly select the display." (Ans. 32). Further, the Examiner found "[t]he touchpad when applied to a display system allows for the user to use their finger to make selections directly on the display device." (*Id.*).

Appellants, when referencing Sinclair, column 19, lines 25-26, argue "[w]hile the noted passage generally indicates that a 'touchpad' may be used as a suitable input device, Applicants respectfully submit that a touchpad is not the same as a 'touch-sensitive display' ... as presently claimed." (App. Br. 20) (emphasis omitted).

We agree with the Examiner that Sinclair discloses a touchpad. As the Specification of the present application does not explicitly define a touch-sensitive display, we find that the touchpad of Sinclair corresponds to the claimed touch-sensitive display (*See* FF 8). Accordingly, Appellants have not persuaded us of error in the Examiner's conclusion of obviousness regarding claim 18. Thus, the Examiner's rejection of claim 18 is sustained.

Claim 19

Claim 19 depends indirectly from independent claim 17 and recites, "including the step of displaying said navigation selectable elements in a tree form." (App. Br. 28, Claims Appendix).

The Examiner found that Sinclair discloses that (1) "[b]ased on the selection at one level of a navigation selectable element[,] an associated selection of navigation selectable elements are displayed," and (2) Figures 17 illustrate that "the selectable links have a hierarchical relationship and the form in which the selectable links are display[ed] is in a tree form." (Ans. 32). Further, the Examiner found that "[t]he user selects one action at [a] distinct screen which leads the story in a particular direction leading to associated actions that are selectable at later screens." (Ans. 32).

Appellants contend "Sinclair discloses a cellular telephone adapted to play text games" and "Wynn discloses a video feed display." (App. Br. 20). Further, Appellants argue "[t]here is no basis for asserting that either of these types of presentations can or should be arranged or displayed in a tree form." (*Id.*).

We find that the Specification of the present application does not provide an explicit definition of "tree form." However, we agree with the Examiner that one of ordinary skill in the art would have recognized the selectable elements displayed in a hierarchical manner, as selectable elements displayed in a tree form. (*See* Ans. 32). Thus, Appellants have not persuaded us of error in the Examiner's conclusion of obviousness regarding claim 19. Accordingly, the rejection of claim 19 is sustained.

Claim 22

Claim 22 depends indirectly from claim 17 and recites "wherein said soft count system is arranged to verify the authenticity of accepted vouchers or tickets and reconcile said accepted vouchers or tickets against those that have been recorded as having been received and paid by said one or more gaming devices within said gaming system." (App. Br. 28, Claims Appendix).

In rejecting claim 22, the Examiner relies on Bradshaw, column 6, lines 44-50 (Ans. 17). The Examiner found that (1) "Bradshaw discloses an accounting system for casinos"; (2)"[t]he authenticity of the interactions in this accounting system is necessary where large amounts of money are involved"; and (3) "[t]he ID ensures that authenticity of the interactions is valid and the accepted information including vouchers or tickets are also valid." (Ans. 33).

Appellants argue "that this brief recited passage in Bradshaw simply does not teach this claim element." (Ans. 21). After review of the cited passage, we agree with Appellants. Thus, Appellants have persuaded us of error in the Examiner's finding of obviousness regarding claim 22. Accordingly, the Examiner's rejection of claim 22 is reversed.

Claim 23

Claim 23 depends indirectly from claim 17 and recites "wherein said gaming system accounting system is adapted for use by casino financial personnel and cashiers, wherein at least one user profile for one cashier does not permit the display of soft count information to said cashier on said gaming system." (App. Br. 29, Claims Appendix).

Appellants contend that the Examiner cites Bradshaw, column 7, lines

15-25, and argue "that this brief recited passage in Bradshaw simply does not teach this claim element." (App. Br. 21). After review of the cited passage, we agree with Appellants. Thus, Appellants have persuaded us of error in the Examiner's finding of obviousness regarding claim 23. Accordingly, the Examiner's rejection of claim 23 is reversed.

Claim 24

Claim 24 depends indirectly from claims 17 and recites "wherein said gaming system accounting system comprises an audit system adapted to poll a host of said gaming system to confirm proper operation of the system." (App. Br. 29, Claims Appendix).

Appellants contend that the Examiner cites Bradshaw, column 2, lines 52-57, and argue "that this brief recited passage in Bradshaw simply does not teach this claim element." (App. Br. 22). After review of the cited passage, we agree with Appellants. Thus, Appellants have persuaded us of error in the Examiner's finding of obviousness regarding claim 24.

Accordingly, the Examiner's rejection of claim 24 is reversed.

Claim 27

Claim 27 depends indirectly from claim 17 and recites "wherein said location of said one or more elements of the graphical user interface depends on whether a particular user is left or right handed." (App. Br. 29, Claims Appendix).

Appellants argue that (1) "Sinclair discloses a cellular telephone adapted to play text games" and (2) "Wynn discloses a video feed display." (App. Br. 22). Further, Appellants argue "[t]here is no basis for asserting that either of these types of presentations can or should be arranged with respect to whether a user is right or left handed." (App. Br. 22).

The Examiner found "a system that configures a graphical user interface based on [a] user profile would be motivated to configure a graphical user interface based on whether the user is left or right handed." (Ans. 34). Further, the Examiner concluded "[i]t would have been obvious to one skilled in the art at the time of the invention that location of the elements of the graphical user interface depends on whether a particular user is left or right handed." (*Id.*).

We find that it would have been obvious to a skilled artisan at the time of the invention to include whether a user was right or left handed in the profile of a user of a gaming system. Thus, we agree with the Examiner that it would have been obvious to a skilled artisan at the time of the invention to make a graphical user interface depend on whether a particular user is left or right handed.

Accordingly, Appellants have not persuaded us of error in the Examiner's conclusion of obviousness regarding claim 27. Accordingly, the Examiner's rejection of claim 27 is sustained.

Claim 31

Claim 31 depends indirectly from claim 17, and recites "wherein said user profile comprises a common user profile shared by a plurality of users of said gaming system." (App. Br. 30, Claims Appendix).

Appellants contend that the Examiner cites Wynn, column 2, lines 38-45, and argue "that this brief recited passage in Wynn simply does not teach this claim element. (App. Br. 23). Further, Appellants argue "to the extent that the Final Office Action argues that data distinct to each user results in different user profiles, that it cannot also argue that there exists any common

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user profile based on card club holder data, since every user is a different person by default." (App. Br. 23).

After review of the cited passage, we agree with Appellants. Thus, Appellants have persuaded us of error in the Examiner's finding of obviousness regarding claim 31. Accordingly, the Examiner's rejection of claim 31 is reversed.

DECISION

We reverse the Examiner's rejection under § 103 with respect to claims 1-8, 10-14, 22-24, 31-33.

We affirm the Examiner's rejections under § 103 with respect to claims 17-21, and 25-30.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED-IN-PART

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